

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Timothy R. Bonner, P. Michael Jones,
David H. Zimmerman, Barry J.
Jozwiak, Kathy L. Rapp, David
Maloney, Barbara Gleim, Robert
Brooks, Aaron Bernstine, Timothy F.
Twardzik, Dawn W. Keefer, Dan
Moul, Francis X. Ryan, and Donald
“Bud” Cook,

Petitioners,

v.

Leigh M. Chapman, in her official
capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and
Commonwealth of Pennsylvania
Department of State,

Respondents, and

DSCC, DCCC,
Democratic National Committee,
Pennsylvania Democratic Party,

Intervenor-Respondents.

No. 364 M.D. 2022

**PETITIONERS’ RESPONSE TO
DSCC AND DCCC INTERVENOR-
RESPONDENTS’ PRELIMINARY
OBJECTIONS AND CROSS-
APPLICATION FOR SUMMARY
RELIEF**

Filed on behalf of Petitioners,
Timothy R. Bonner, P. Michael Jones,
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Maloney, Barbara Gleim, Robert
Brooks, Aaron Bernstine, Timothy F.
Twardzik, Dawn W. Keefer, Dan
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Counsel of Record for Petitioners:

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INTRODUCTION

The Preliminary Objections and Cross-Application for Summary Relief (“Cross-Application”) filed by the DSCC and DCCC (“the Committees”) in large part overlap the Preliminary Objections and Cross-Applications for Summary Relief filed by Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and Commonwealth of Pennsylvania, Department of State (collectively, “the Government Respondents”) and the Democratic National Committee (“DNC”) and Pennsylvania Democratic Party (“PDP”). Like the Government Respondents, the Committees attempt to argue that Petitioners’ claims are barred by laches, that the nonseverability provision of Act 77 (Laws of the General Assembly of the Commonwealth of Pennsylvania, Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”) was not triggered by *Migliori v. Cohen*, 36 F.4th 153 (3rd Cir. 2022), that the date requirements at issue are severable, and that recognizing that Act 77 is now void would disenfranchise many voters and destroy free and fair elections in Pennsylvania. Those arguments are equally unavailing here and people were able to exercise their right to vote in Pennsylvania in free and fair elections before Act 77, and they will still be able to do so after this Court declares Act 77 void.

The Preliminary Objections of the Committees should be overruled and their Cross-Application should be denied because (a) and the nonseverability provision

of Act 77 is enforceable and the Petitioners are not required to plead more specifically the legal theories underlying the petition, (b) in *Migliori* a court of competent jurisdiction held that the date requirement provisions of Sections 6 and 8 of Act 77 and/or their application to a person or circumstance were invalid, (c) *Migliori* did not and could not hold that Act 77's date requirements are merely directory, and (d) neither the nature of Act 77 nor subsequent amendments prevent the enforcement of its nonseverability provision.

Petitioners incorporate by reference their Application for Summary Relief, as well as their Responses to the Government Respondents' and other Intervenor-Respondents' Preliminary Objections and Cross-Applications for Summary Relief, to the extent applicable, to avoid duplicative briefing as much as possible. No party has identified any factual issues that would preclude summary disposition of this case and there appear to be no material facts in dispute.

BACKGROUND

The allegations in the background sections of the Committees' Preliminary Objections and Cross-Application are almost entirely legal conclusions to which no response is required and quotes and characterizations of laws and court opinions which speak for themselves. It is admitted that millions of Pennsylvanians took advantage of mail-in voting in Pennsylvania and that over a million requested to be placed on the permanent mail-in ballot list.

RESPONSES TO PRELIMINARY OBJECTIONS AND ARGUMENTS FROM CROSS-APPLICATION

I. The Committees cannot meet their burden of establishing a laches defense.

The Committees cannot meet their burden of establishing a laches defense.

Petitioners incorporate section III.B and their discussion of *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020) in section III.C.3 of their Response to the Government Respondents' Preliminary Objections and Cross-Application for Summary Relief. The Committees failed to note that the decision in *Benezet Consulting, LLC v. Boockvar*, 433 F.Supp.3d 670 (M.D.Pa. 2020) was vacated by *Benezet Consulting LLC v. Sec'y Commonwealth*, 26 F.4th 580 (3rd Cir. 2022).

II. *Migliori* effectively invalidated provisions of Sections 6 and 8 of Act 77 and/or their application to a person or circumstance.

Migliori effectively invalidated provisions of Sections 6 and 8 of Act 77 and/or their application to a person or circumstance. Petitioners incorporate section III.B.i from their Response to the DNC and PADP Preliminary Objections and Cross-Application as if fully set forth here.

III. The nonseverability provision of Act 77 is enforceable.

The nonseverability provision of Act 77 is enforceable. Petitioners incorporate section III.C.3 of their Response to the Government Respondents' Preliminary Objections and Cross-Application for Summary Relief.

IV. No disenfranchisement or violation of the Free and Equal Elections Clause would flow from recognizing that Act 77 is now void.

No disenfranchisement or violation of the Free and Equal Elections Clause would flow from recognizing that Act 77 is now void. No disenfranchisement would ensue from granting the relief that the Petitioners seek here. On the contrary, voters would simply go back to voting just as they had prior to Act 77. No relief is sought as to any past election. Needing to inform voters of changes in applicable election law is not disenfranchisement. Neither would it be “disenfranchisement” if the General Assembly repealed Act 77. There is no rational reason to expect voters to react by lapsing into such confusion that they would fail to vote altogether in some future election just because, under Act 77, they had elected to be on the “permanent” mail-in ballot list file. This Court has the power to fashion relief in this case to avoid any such result.

As explained by now Justice Brobson when he was a Judge of this Court, and quoted favorably by Justice Wecht in his CIR Opinion in *In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, 241 A.3d 1058, 1087 (Pa. 2020):

While we realize that our decision in this case means that some votes will not be counted, the decision is grounded in law. It ensures that the votes will not be counted because the votes are invalid as a matter of law. Such adherence to the law ensures equal elections throughout the Commonwealth, on terms set by the General Assembly. The danger to our democracy is not that electors who failed to follow the law in

casting their ballots will have their ballots set aside due to their own error; rather, the real danger is leaving it to each county board of election to decide what laws must be followed (mandatory) and what laws are optional (directory), providing a patchwork of unwritten and arbitrary rules that will have some defective ballots counted and others discarded, depending on the county in which a voter resides. Such a patchwork system does not guarantee voters an “equal” election, particularly where the election involves inter-county and statewide offices. We do not enfranchise voters by absolving them of their responsibility to execute their ballots in accordance with law.

See also Pa. Democratic Party v. Boockvar, 238 A.3d 345, 389 (Pa. 2020) (Wecht, J. concurring opinion) (“... the failure to ‘fill out, date and sign the declaration printed on’ the ballot return envelope, as required by 25 P.S. § 3150.16(a), is a deficiency that can be readily observed. Absent some proof that the enforcement of such a uniform, neutrally applicable election regulation will result in a constitutionally intolerable ratio of rejected ballots, I detect no offense to the Free and Equal Elections Clause.”). Accordingly, this Court should overrule the Committees’ Preliminary Objections and deny their Cross-Application for Summary Relief.

CONCLUSION

For the aforementioned reasons, Petitioners respectfully urge this Court to deny the Committees' Cross-Application for Summary Relief, overrule their Preliminary Objections, and enter the attached proposed orders.

Respectfully submitted,



Gregory H. Teufel
Attorney for Petitioners

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DSCC, DCCC,
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ORDER DENYING SUMMARY RELIEF

AND NOW, this ____ day of _____, 2022, pursuant to Rule 1532(b)
of the Pennsylvania Rules of Appellate Procedure and upon consideration of
Cross-Application for Summary Relief of the DSCC and DCCC, along with

Petitioners' responses, it is ORDERED AND DECREED that said Cross-Application for Summary Relief is denied.

IT IS SO ORDERED.

J.

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ORDER OVERRULING PRELIMINARY OBJECTIONS

AND NOW, this ____ day of _____, 2022, pursuant to Rule 1532(b)
of the Pennsylvania Rules of Appellate Procedure and upon consideration of the
Preliminary Objections of the DSCC and DCCC, along with Petitioners’ responses,
it is ORDERED AND DECREED that said Preliminary Objections are Overruled.

IT IS SO ORDERED.

J.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Date: September 2, 2022



Gregory H. Teufel, Esq.

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